

APPEAL NO. 022396
FILED NOVEMBER 4, 2002

This appeal arises pursuant to the Texas Workers' Compensation Act, TEX. LAB. CODE ANN. § 401.001 *et seq.* (1989 Act). A contested case hearing (CCH) was held on August 27, 2002. The hearing officer resolved the disputed issues by deciding that (1) the appellant (claimant) did not sustain a compensable repetitive trauma injury with a date of injury of _____; (2) that the respondent (carrier) was relieved from liability under Section 409.002 because of the claimant's failure to timely notify his employer pursuant to Section 409.001, and because of his failure to prove that he had good cause for not reporting his alleged work-related injury until May 23, 2002; (3) that the alleged injury does not include an injury to the left wrist/fingers/hand/forearm/elbow, bilateral shoulders, cervical spine and/or lumbar spine; and (4) that the claimant did not have disability from January 24, 2002, to the present as he did not have a compensable injury. The claimant appealed on sufficiency grounds and the carrier responded, urging affirmance.

DECISION

Affirmed.

The hearing officer did not err in determining that the claimant did not sustain a compensable repetitive trauma injury with a date of injury of _____. The claimant testified that after six weeks of working as a shipping/receiving clerk, loading and unloading heavy boxes, he sustained a repetitive trauma injury to his left upper extremity, both shoulders, and his cervical and lumbar spine. The claimant also testified that on the alleged date of injury, while lifting a 70-pound box, he felt his back "snap." It is important to note that the claimant did not allege a discrete injury. The carrier argued that the claimant did not sustain the alleged injury, as he did not present evidence of either a repetitive or traumatic injury. The carrier also noted that the claimant did not seek medical attention for his alleged injury until April 9, 2002, at which time he did not tell the (Hospital) personnel that his injury was work-related. The carrier also pointed out on cross-examination of the claimant that he had several previous injuries and that the claimant testified to the fact that he was still taking pain medication from one of the previous injuries on the date of the hearing. The hearing officer appears to have agreed with the carrier on this issue, deciding that the claimant failed to establish the repetitive or traumatic nature of his employment and also failed to prove a nexus between his job duties and his alleged injuries.

The hearing officer did not err in determining that the carrier was relieved from liability under Section 409.002 because of the claimant's failure to timely notify his employer pursuant to Section 409.001, and because of his failure to prove that he had good cause for not reporting his alleged work-related injury until May 23, 2002. The claimant testified that his date of injury was _____; that he told his on-site supervisor that day about his injury; and that he called in the following day to tell the

employer that he wanted to file a claim for injury, but was put on hold and had to hang up as he was adversely affected by the pain medications he was taking. The carrier presented the testimony of the employee who is in charge of the employer's workers' compensation claims, as well as computer records of the claimant's contact with the employer. The employee testified that she had not heard of the claimant's alleged injury until May 24, 2002, and that the records show that, while the claimant contacted the employer by phone on two occasions in February 2002, he did not report an injury on those occasions.

The hearing officer did not err in determining that the alleged injury does not include an injury to the left wrist/fingers/hand/forearm/elbow, bilateral shoulders, cervical spine and/or lumbar spine. The hearing officer found that the claimant failed to establish that his work activities caused him injury or that he sustained physical harm to the structure of his body as a result of his employment. The hearing officer noted that the evidence was insufficient to establish the alleged injury.

As we affirm the compensability determinations, we likewise affirm the disability determination. The hearing officer did not err in determining that the claimant did not have disability from January 24, 2002, until the date of the CCH. Because the claimant did not establish a compensable injury, he cannot have disability as a matter of law. See Section 401.011(16).

Section 410.165(a) provides that the hearing officer, as finder of fact, is the sole judge of the relevance and materiality of the evidence as well as of the weight and credibility that is to be given the evidence. It was for the hearing officer, as trier of fact, to resolve the inconsistencies and conflicts in the evidence. Garza v. Commercial Insurance Company of Newark, New Jersey, 508 S.W.2d 701, 702 (Tex. Civ. App.-Amarillo 1974, no writ). This is equally true regarding medical evidence. Texas Employers Insurance Association v. Campos, 666 S.W.2d 286, 290 (Tex. App.-Houston [14th Dist.] 1984, no writ). The trier of fact may believe all, part, or none of the testimony of any witness. Taylor v. Lewis, 553 S.W.2d 153, 161 (Tex. Civ. App.-Amarillo 1977, writ ref'd n.r.e.); Aetna Insurance Co. v. English, 204 S.W.2d 850 (Tex. Civ. App.-Fort Worth 1947, no writ). An appeals-level body is not a fact finder and does not normally pass upon the credibility of witnesses or substitute its own judgment for that of the trier of fact, even if the evidence would support a different result. National Union Fire Insurance Company of Pittsburgh, Pennsylvania v. Soto, 819 S.W.2d 619, 620 (Tex. App.-El Paso 1991, writ denied). When reviewing a hearing officer's decision for factual sufficiency of the evidence we should reverse such decision only if it is so contrary to the overwhelming weight of the evidence as to be clearly wrong and unjust. Cain v. Bain, 709 S.W.2d 175, 176 (Tex. 1986); Pool v. Ford Motor Co., 715 S.W.2d 629, 635 (Tex. 1986).

The hearing officer's decision and order are affirmed.

The true corporate name of the carrier is **AMERICAN CASUALTY COMPANY OF READING, PENNSYLVANIA** and the name and address of its registered agent for service of process is

**CT CORPORATION SYSTEM
350 NORTH ST. PAUL STREET
DALLAS, TEXAS 75201.**

Thomas A. Knapp
Appeals Judge

CONCUR:

Susan M. Kelley
Appeals Judge

Margaret L. Turner
Appeals Judge